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09/232,866	01/15/1999	RASSOLL RASHIDI	96CAD01	8300

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EXAMINER

SCHAETZLE, KENNEDY

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 29

Application Number: 09/232,866
Filing Date: January 15, 1999
Appellant(s): RASHIDI, RASSOLL

Timothy E. Nauman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 23, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 6-11, 41, 46 and 47 stand or fall together because appellant's brief --while including a statement that this grouping of claims does not stand or fall together-- does not give reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,462,527	Stevens-Wright et al.	10-1995
5,944,690	Falwell et al.	8-1999
5,383,852	Stevens-Wright	1-1995

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 6 and 41 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 24.

Claims 2-5, 42-45, 48 and 49 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 24.

(11) Response to Argument

The appellant argues that the Stevens-Wright '527 patent does not have tension/compression members since, when one cable is placed under tension, the other cable goes slack. Fig. 13a is referred to in an effort to show what is asserted to be a slack cable. The examiner contends, however, that nothing in the '527 patent refers to one cable as being slack while the other is in tension. The showing in Fig. 13a of cable 32c could equally as well be a showing of a cable that is buckling (i.e., a cable that is under compressive force). The appellant appears to imply that because the Stevens-Wright et al. patent only refers to the cables as "pull" cables, there is no compression involved. This is not convincing because the particular adjective the author associated with the cables has little bearing on whether the cable is placed in compression. If this were the case, the examiner could easily use a parallel argument to refute the appellant's position by stating that the cables are never referred to as "slack" cables either.

The appellant further argues "...nowhere is there a teaching, nor even a remote suggestion, that the cables carry compressive forces in order to effect lateral displacement of the catheter distal end." It is unclear how the appellant can make such an assertion when the Falwell et al. patent (Pat. No. 5,944,690) --owned by the same company as the '527 reference-- explicitly states that mechanisms for steering catheters typically include control cables which are operated in such a manner so as to place one of the cables in tension, while "...simultaneously compressing, or buckling, the other wire," (col. 1, lines 31-46). Falwell et al. further go on to say in the same paragraph that an example of such a mechanism may be found in Stevens-Wright Patent No. 5,383,852, which is assigned to the same assignee. This patent contains the identical

Figs. 13a – 13f and is for all intensive purposes, drawn to the same basic structure as the '527 patent. Clearly those of ordinary skill in the art would have recognized that the same forces at work in the '852 Stevens-Wright patent are also at work in the '527 Stevens-Wright patent. Once the examiner has presented evidence of reasoning tending to show inherency, the burden shifts to the appellant to show an unobvious difference (see MPEP 2112).

Regarding the appellant's assertion that Stevens-Wright et al. teaches away from such an arrangement, the examiner does not agree. The appellant in an effort to prove his position refers to col. 6, lines 25-46 of the Stevens-Wright et al. patent and simply makes a conclusory statement that such language requires that the catheter sections behave in a compressive manner but not the pull cables. The examiner considers this text to merely explain that sections of the distal end of the catheter can be bent about a number of points independently of one another by pulling selected pairs of pull cables – each pair of pull cables being associated with a specific section of catheter. Such a feature has no bearing on the question of cable compression.

Finally, the appellant argues that the reference to Falwell '690 and Stevens-Wright '852 is misplaced because either Stevens-Wright et al. '527 has an inherent teaching or it does not. The examiner is not relying on the Falwell et al. reference or the Stevens-Wright '852 reference to provide support for what is supposedly missing in the '527 patent, but rather is merely pointing to these references as evidence that the cables of the '527 patent are inherently tension/compression members. Neither the Falwell et al. reference nor the Stevens-Wright '527 reference change what is already present in the Stevens-Wright et al. patent (note MPEP 2112).


For the above reasons, it is believed that the rejections should be sustained.

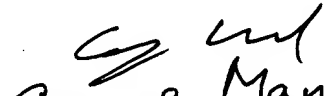
Respectfully submitted,

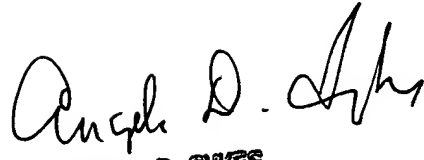
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